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10
11 *Attorneys for Defendant*
Safeway Inc.

12
13
14
15 **UNITED STATES DISTRICT COURT FOR THE**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18
19 THEADORA KING, individually, and on
behalf of those similarly situated,

CASE NO: CV-08-0999

20 Plaintiff,

21 v.

22 SAFEWAY INC.,

23 Defendant.
24
25
26
27
28

**DECLARATION OF KATHLEEN P.
LALLY IN SUPPORT OF SAFEWAY
INC.'S OPPOSITION TO PLAINTIFF'S
MOTION TO SHORTEN TIME**

1
2 I, Kathleen P. Lally, declare and state as follows:

3 1. I am an attorney admitted to practice law in Illinois and an associate with the law
4 firm of Latham & Watkins LLP, counsel for Defendant Safeway Inc. ("Defendant" or "Safeway"),
5 a retailer of Aurora Dairy Corporation, d/b/a Aurora Organic Dairy ("Aurora"). This declaration is
6 filed in support of Safeway Inc.'s Opposition To Plaintiff's Motion To Shorten Time. I have
7 personal and firsthand knowledge of the facts stated in this declaration. If called upon to do so, I
8 could and would testify competently thereto.
9

10 2. On February 19, 2008, I spoke with counsel for Plaintiff, Elizabeth A. Fegan of
11 Hagens Berman Sobol Shapiro LLP, and informed her of Safeway's Notice of Removal. Ms.
12 Fegan requested that the notice be sent to her electronically, indicating that she would like a copy
13 of the notice of removal as soon as possible because she intended on filing a motion to remand.
14 Another associate at Latham & Watkins LLP sent a PDF copy of Safeway's Notice of Removal to
15 Ms. Fegan on February 19, 2008.
16

17 3. Also during the February 19, 2008 phone call with Ms. Fegan, I informed her that
18 the Judicial Panel on Multidistrict Litigation ("Multidistrict Panel") was expected to rule on the
19 pending motion for transfer consolidation within the next day or two. The parties had been
20 discussing the upcoming ruling of the Multidistrict Panel as it related to another action for which
21 Ms. Fegan is also counsel. In fact, counsel for plaintiff in this action is also counsel for plaintiffs in
22 four other actions, Hesse v. Costco Wholesale Corp., No. C07-1975-MJP (W.D. Wash.) before
23 Honorable Marsha J. Pechman; Riley v. Safeway Inc., No. 07-cv-06174-SC (N.D. Cal.) before
24 Honorable Samuel Conti; Bowen v. Wal-Mart Stores, Inc., No. 4:08-cv-00010-JLH (E.D. Ark.)
25 before Honorable J. Leon Holmes; and Tysseling-Mattiace v. Wild Oats Markets, Inc., No.
26
27
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1 07-cv-02622-WYD-BNB (D. Col.) before Honorable Wiley Y. Daniel, all of which are now
2 subject to the February 26, 2008 conditional transfer order.

3 4. On March 4, 2008, I spoke with the Clerk of the Judicial Panel on Multidistrict
4 Litigation who informed me that a conditional transfer order was being prepared for this matter, as
5 well as for the other matters that were identified on February 26, 2008 by counsel for Aurora as
6 potential tag-along actions to In re: Aurora Dairy Corporation Organic Milk Marketing and Sales
7 Practice Litigation, MDL Docket No. 1907, and should be issued no later than early the week of
8 March 10, 2008.

9
10 5. Attached hereto as Exhibit A is a true and correct copy of the Conditional Transfer
11 Orders entered on February 26, 2008 by the Judicial Panel on Multidistrict Litigation regarding In
12 re: Aurora Dairy Corporation Organic Milk Marketing and Sales Practice Litigation, MDL Docket
13 No. 1907.

14
15 6. Attached hereto as Exhibit B is a true and correct copy of a letter dated January 24,
16 2008 sent by attorney Mark S. Mester of Latham & Watkins LLP to the clerk of the Judicial Panel
17 on Multidistrict District Litigation enclosing amended Schedule of Actions.

18 I declare under penalty of perjury under the laws of the United States that the
19 foregoing is true and correct.

20
21 Dated: March 10, 2008

Respectfully submitted,

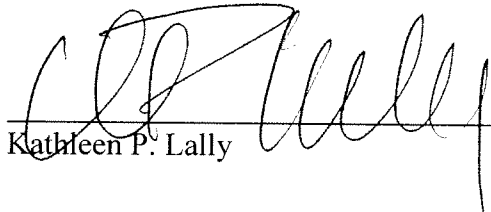
22
23
24 
Kathleen P. Lally

EXHIBIT A

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

CHAIRMAN:
Judge John G. Heyburn II
United States District Court
Western District of Kentucky

MEMBERS:
Judge D. Lowell Jensen
United States District Court
Northern District of California

Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

Judge Anthony J. Scirica
United States Court of Appeals
Third Circuit

DIRECT REPLY TO:

Jeffery N. Lüthi
Clerk of the Panel
One Columbus Circle, NE
Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: (202) 502-2800
Fax: (202) 502-2888
<http://www.jpml.uscourts.gov>

February 26, 2008

FEB 26 2008

TO INVOLVED COUNSEL

Handwritten: [Signature] [Signature]

Re: MDL No. 1907 -- IN RE: Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation

(See Attached CTO-1)

Dear Counsel:

Attached hereto is a copy of a conditional transfer order filed today by the Panel involving the above-captioned matter. This matter is transferred pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001). Copies of Rule 5.2, dealing with service, and Rules 7.4 and 7.5, regarding "tag-along" actions, are attached for your convenience.

Inasmuch as there is an unavoidable time lag between notification of the pendency of the tag-along action and the filing of a conditional transfer order, counsel are required by Rule 7.4(b) to notify this office **BY FACSIMILE**, at (202) 502-2888, of any official changes in the status of the tag-along action. These changes could involve dismissal of the action, remand to state court, transfer to another federal court, etc., as indicated by an order filed by the district court. Your cooperation would be appreciated.

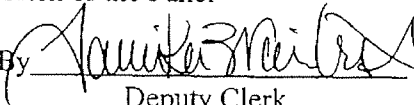
NOTICE OF OPPOSITION DUE ON OR BEFORE: March 12, 2008 (4 p.m. EST)
(Facsimile transmission is suggested.)

If you are considering opposing this conditional transfer order, please review Rules 7.4 and 7.5 of the Panel Rules before filing your Notice of Opposition.

A list of involved counsel is attached.

Very truly,

Jeffery N. Lüthi
Clerk of the Panel

By 
Deputy Clerk

Attachments

JPML Form 39

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FEB 26 2008

FILED
CLERK'S OFFICE

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: AURORA DAIRY CORP. ORGANIC
MILK MARKETING AND SALES
PRACTICES LITIGATION

MDL No. 1907

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-1)


On February 20, 2008, the Panel transferred three civil actions to the United States District Court for the Eastern District of Missouri for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* ___ F.Supp.2d ___ (J.P.M.L. 2008). With the consent of that court, all such actions have been assigned to the Honorable E. Richard Webber.

It appears that the actions on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the Eastern District of Missouri and assigned to Judge Webber.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the Eastern District of Missouri for the reasons stated in the order of February 20, 2008, and, with the consent of that court, assigned to the Honorable E. Richard Webber.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Eastern District of Missouri. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:


Jeffrey N. Luthi
Clerk of the Panel

**IN RE: AURORA DAIRY CORP. ORGANIC
MILK MARKETING AND SALES
PRACTICES LITIGATION**

MDL No. 1907

SCHEDULE CTO-1 - TAG-ALONG ACTIONS

<u>DIST. DIV. C.A. #</u>	<u>CASE CAPTION</u>
ARKANSAS EASTERN	
ARE 4 08-10	Paul Bowen v. Wal-Mart Stores, Inc.
CALIFORNIA NORTHERN	
CAN 3 07-5331	Brenda Gallardo v. Aurora Dairy Corp.
CAN 3 07-6174	Shawn Riley v. Safeway, Inc.
COLORADO	
CO 1 07-2285	Elizabeth Cockrell v. Aurora Dairy Corp.
CO 1 07-2449	Jim Snell, et al. v. Aurora Dairy Corp., et al.
CO 1 07-2622	Vicki M. Tysseling-Mattiace v. Wild Oats Markets, Inc.
CO 1 07-2625	Margot West, et al. v. Aurora Dairy Corp.
MINNESOTA	
MN 0 07-4755	Patrick Hudspeth, et al. v. Target Corp.
NEW YORK EASTERN	
NYE 2 07-4425	Ilsa Lee Kaye v. Aurora Dairy Corp.
NEW YORK SOUTHERN	
NYS 1 07-9418	Hillary White, et al. v. Aurora Dairy Corp.
WASHINGTON WESTERN	
WAW 2 07-1975	Channing Hesse v. Costco Wholesale Corp.

RULE 5.2: SERVICE OF PAPERS FILED

(a) All papers filed with the Clerk of the Panel shall be accompanied by proof of previous or simultaneous service on all other parties in all actions involved in the litigation. Service and proof of service shall be made as provided in Rules 5 and 6 of the Federal Rules of Civil Procedure. The proof of service shall indicate the name and complete address of each person served and shall indicate the party represented by each. If a party is not represented by counsel, the proof of service shall indicate the name of the party and the party's last known address. The proof of service shall indicate why any person named as a party in a constituent complaint was not served with the Section 1407 pleading. The original proof of service shall be filed with the Clerk of the Panel and copies thereof shall be sent to each person included within the proof of service. After the "Panel Service List" described in subsection (d) of this Rule has been received from the Clerk of the Panel, the "Panel Service List" shall be utilized for service of responses to motions and all other filings. In such instances, the "Panel Service List" shall be attached to the proof of service and shall be supplemented in the proof of service in the event of the presence of additional parties or subsequent corrections relating to any party, counsel or address already on the "Panel Service List."

(b) The proof of service pertaining to motions for transfer of actions pursuant to 28 U.S.C. § 1407 shall certify that copies of the motions have been mailed or otherwise delivered for filing to the clerk of each district court in which an action is pending that will be affected by the motion. The proof of service pertaining to a motion for remand pursuant to 28 U.S.C. § 1407 shall certify that a copy of the motion has been mailed or otherwise delivered for filing to the clerk of the Section 1407 transferee district court in which any action affected by the motion is pending.

(c) Within eleven days of filing of a motion to transfer, an order to show cause or a conditional transfer order, each party or designated attorney shall notify the Clerk of the Panel, in writing, of the name and address of the attorney designated to receive service of all pleadings, notices, orders and other papers relating to practice before the Judicial Panel on Multidistrict Litigation. Only one attorney shall be designated for each party. Any party not represented by counsel shall be served by mailing such pleadings to the party's last known address. Requests for an extension of time to file the designation of attorney shall not be granted except in extraordinary circumstances.

(d) In order to facilitate compliance with subsection (a) of this Rule, the Clerk of the Panel shall prepare and serve on all counsel and parties not represented by counsel, a "Panel Service List" containing the names and addresses of the designated attorneys and the party or parties they represent in the actions under consideration by the Panel and the names and addresses of the parties not represented by counsel in the actions under consideration by the Panel. After the "Panel Service List" has been received from the Clerk of the Panel, notice of subsequent corrections relating to any party, counsel or address on the "Panel Service List" shall be served on all other parties in all actions involved in the litigation.

(e) If following transfer of any group of multidistrict litigation, the transferee district court appoints liaison counsel, this Rule shall be satisfied by serving each party in each affected action and all liaison counsel. Liaison counsel designated by the transferee district court shall receive copies of all Panel orders concerning their particular litigation and shall be responsible for distribution to the parties for whom he or she serves as liaison counsel.

(a) Upon learning of the pendency of a potential "tag-along action," as defined in Rule 1.1 of these Rules, an order may be entered by the Clerk of the Panel transferring that action to the previously designated transferee district court on the basis of the prior hearing session(s) and for the reasons expressed in previous opinions and orders of the Panel in the litigation. The Clerk of the Panel shall serve this order on each party to the litigation but, in order to afford all parties the opportunity to oppose transfer, shall not send the order to the clerk of the transferee district court for fifteen days from the entry thereof.

(b) Parties to an action subject to a conditional transfer order shall notify the Clerk of the Panel within the fifteen-day period if that action is no longer pending in its transferor district court.

(c) Any party opposing the transfer shall file a notice of opposition with the Clerk of the Panel within the fifteen-day period. If a notice of opposition is received by the Clerk of the Panel within this fifteen-day period, the Clerk of the Panel shall not transmit said order to the clerk of the transferee district court until further order of the Panel. The Clerk of the Panel shall notify the parties of the briefing schedule.

(d) Within fifteen days of the filing of its notice of opposition, the party opposing transfer shall file a motion to vacate the conditional transfer order and brief in support thereof. The Chairman of the Panel shall set the motion for the next appropriate hearing session of the Panel. Failure to file and serve a motion and brief shall be treated as withdrawal of the opposition and the Clerk of the Panel shall forthwith transmit the order to the clerk of the transferee district court.

(e) Conditional transfer orders do not become effective unless and until they are filed with the clerk of the transferee district court.

(f) Notices of opposition and motions to vacate such orders of the Panel and responses thereto shall be governed by Rules 5.12, 5.2, 7.1 and 7.2 of these Rules.

RULE 7.5: MISCELLANEOUS PROVISIONS CONCERNING "TAG-ALONG ACTIONS"

(a) Potential "tag-along actions" filed in the transferee district require no action on the part of the Panel and requests for assignment of such actions to the Section 1407 transferee judge should be made in accordance with local rules for the assignment of related actions.

(b) Upon learning of the pendency of a potential "tag-along action" and having reasonable anticipation of opposition to transfer of that action, the Panel may direct the Clerk of the Panel to file a show cause order, in accordance with Rule 7.3 of these Rules, instead of a conditional transfer order.

(c) Failure to serve one or more of the defendants in a potential "tag-along action" with the complaint and summons as required by Rule 4 of the Federal Rules of Civil Procedure does not preclude transfer of such action under Section 1407. Such failure, however, may be submitted by such a defendant as a basis for opposing the proposed transfer if prejudice can be shown. The inability of the Clerk of the Panel to serve a conditional transfer order on all plaintiffs or defendants or their counsel shall not render the transfer of the action void but can be submitted by such a party as a basis for moving to remand as to such party if prejudice can be shown.

(d) A civil action apparently involving common questions of fact with actions under consideration by the Panel for transfer under Section 1407, which was either not included in a motion under Rule 7.2 of these Rules, or was included in such a motion that was filed too late to be included in the initial hearing session, will ordinarily be treated by the Panel as a potential "tag-along action."

(e) Any party or counsel in actions previously transferred under Section 1407 or under consideration by the Panel for transfer under Section 1407 shall promptly notify the Clerk of the Panel of any potential "tag-along actions" in which that party is also named or in which that counsel appears.

**IN RE: AURORA DAIRY CORP. ORGANIC
MILK MARKETING AND SALES
PRACTICES LITIGATION**

MDL No. 1907

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MDL No. 1907 - Involved Counsel List (CTO-1) (Continued)

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EXHIBIT B

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Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

January 24, 2008

BY FEDERAL EXPRESS

Jeffery N. Lüthi
 Clerk of the Panel
 Judicial Panel on Multidistrict Litigation
 Thurgood Marshall Federal Judiciary Bldg.
 One Columbus Circle, N.E.,
 Room G-255, North Lobby
 Washington, D.C. 20002-8004

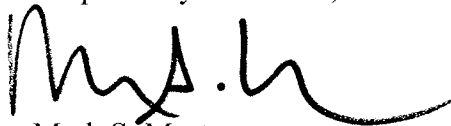
Re: MDL No. 1907: In re Aurora Dairy Corporation
Organic Milk Marketing and Sales Practice Litigation

Dear Mr. Lüthi:

As called for by MDL Rule 7.5, please find enclosed an Amended Schedule of Actions, which reflects several additional federal lawsuits that have been filed against our client, Aurora Dairy Corporation, since the time Aurora filed its opposition to the transfer motion of Plaintiffs Rebecca and Fernando Freyre. See generally Aurora Opp. (filed Nov. 13, 2007). This Amended Schedule supersedes the schedule Aurora previously submitted and reflects recent filings.

In addition, we also advise the Panel of additional federal actions that have been filed against customers of Aurora Dairy Corporation. These actions allege claims purportedly arising out of the sale of organic milk by Aurora. These additional actions are, in turn, also listed on the Amended Schedule of Actions in a separate table.

Respectfully submitted,



Mark S. Mester
 of LATHAM & WATKINS LLP

Enclosure

cc: All Counsel

SCHEDULE OF ACTIONS
AURORA DAIRY CORPORATION IS AWARE OF IN WHICH
IT IS NAMED AS A DEFENDANT AS OF JANUARY 25, 2008

CASE CAPTION	COURT	CIVIL ACTION NO.	JUDGE
Plaintiffs: Kristine Mothershead and Leonie Lloyd, individually and on behalf of all others similarly situated Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	E.D. Missouri, Eastern Division	4:07-cv-01701-CAS	Hon. Charles A. Shaw
Plaintiffs: Maya Fiallos, individually and on behalf of all others similarly situated Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	S.D. Florida, Southern Division	1:07-cv-22748-AJ	Hon. Adalberto J. Jordan
Plaintiffs: Rebecca and Fernando Freyre, on behalf of themselves and all others similarly situated Defendant: Aurora Dairy Corporation	D. Colorado	1:07-cv-02183-EWN-CBS	Hon. Edward W. Nottingham, Jr.

CASE CAPTION	COURT	CIVIL ACTION NO.	JUDGE
<p>Plaintiffs: Mona Still, Helen Phillips, Eve Hana, Jeanmarie Zirger, Kim King, Noelle Fincham, Oksana Jensen, Gabriela Waschewsky, Laurelanne Davis, Debbie Millikan, Joan Scheutz, Sandie Regan, Steve Shriver, Mary Elbertai, Eileen Ptak, Cynthia Roche-Cotter, Kristen Finnegan, Amy Forsman, Joy Beckner, Naomi Mardock, Olive Knaus, Liana Hooded, Donita Robinson, Ilene Rachford, Lisa Hopkins, Caryn Poirier, Erin Diserens, Tammy Coselli, Debra Haines, Debra Schmidt, and Hans Kueck</p> <p>Defendant: Aurora Dairy Corporation, d/b/a Aurora Organic Dairy</p>	D. Colorado	1:07-cv-02188-WDM-BNB	Hon. Walker D. Miller
<p>Plaintiffs: Brenda Gallardo, an individual</p> <p>Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy</p>	N.D. California	3:07-cv-05331-MJJ	Hon. Martin J. Jenkins

CASE CAPTION	COURT	CIVIL ACTION NO.	JUDGE
Plaintiffs: Hillary White and Lynn Michalson, individually and on behalf of all others similarly situated Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	S.D. New York	1:07-cv-09418-DAB	Hon. Deborah A. Batts
Plaintiffs: Ilsa Lee Kaye, individually and on behalf of all others similarly situated Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	E.D. New York	2:07-cv-04425-DRH-ETB	Hon. Denis R. Hurley
Plaintiffs: Elizabeth Cockrell, individually and on behalf of all others similarly situation Defendant: Aurora Dairy Corporation d/b/a Aurora Organic Dairy	D. Colorado	1:07-cv-02285-LTB	Hon. Lewis T. Babcock

CASE CAPTION	COURT	CIVIL ACTION NO.	JUDGE
<p>Plaintiffs: Jim Snell, Steve Clark, John Barrera, Joseph Villari, Elida Gollomp, Claire M. Theodore and Elisabeth Banse, on behalf of themselves and all other similarly situated</p> <p>Defendants: Aurora Dairy Corporation, d/b/a Aurora Organic Dairy, Wild Oats Market, Inc., Costco Wholesale Corporation, Safeway, Inc.</p>	D. Colorado	1:07-cv-02449-MSK-KMT	Hon. Marcia S. Krieger
<p>Plaintiffs: Margot A. West, and Richard E. Ehly, individually and on behalf of a class of all others similarly situated</p> <p>Defendant: Aurora Dairy Corporation, d/b/a Aurora Organic Dairy</p>	D. Colorado	1:07-cv-02625-JLK	Hon. John L. Kane

**SCHEDULE OF ACTIONS IN WHICH AURORA DAIRY CORPORATION
IS NOT NAMED AS A DEFENDANT BUT THAT INVOLVE
THE SALE OF ORGANIC MILK PRODUCED BY AURORA**

CASE CAPTION	COURT	CIVIL ACTION NO.	JUDGE
Plaintiffs: Channing Hesse, individually and on behalf of a class of all others similarly situated Defendant: Costco Wholesale Corporation	W.D. Washington	2:07-cv-01975-MJP	Hon. Marsha J. Pechman
Plaintiffs: Shawn Riley, individually and on behalf of all others similarly situated Defendant: Safeway Inc.	N.D. California	3:07-cv-06174-JCS	Hon. Joseph C. Spero
Plaintiff: Paul Bowen, individually and on behalf of all others similarly situated Defendant: Wal-Mart Stores, Inc.	E.D. Arkansas	4:08-cv-0010-JLH	Hon. J. Leon Holmes
Plaintiffs: Vicki M. Tysseling-Mattiace, individually and on behalf of a class of all others similarly situated Defendant: Wild Oats Markets, Inc.	D. Colorado	1:07-cv-02622- WYD-BNB	Hon. Wiley Y. Daniel

CASE CAPTION	COURT	CIVIL ACTION NO.	JUDGE
Plaintiffs: Patrick and Caryn Hudspeth, individually and on behalf of a class of all others similarly situated Defendant: Target Corporation	D. Minnesota	0:07-cv-04755-PJS- JJG	Hon. Patrick J. Schiltz

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE AURORA DAIRY CORPORATION
ORGANIC MILK MARKETING AND
SALES PRACTICES LITIGATION**

MDL Docket No: 1907

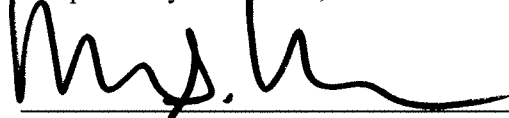
PROOF OF SERVICE

I, Mark S. Mester, hereby certify that copies of the following were served by prepaid,
first class United States mail and E-mail upon all counsel of record listed on the attached Panel
Attorney Service List:

- (1) Amended Schedule of Actions
- (2) Proof Of Service.

Dated: January 25, 2008

Respectfully submitted,



Mark S. Mester, One of the Attorneys for
Defendant Aurora Dairy Corporation

Mark S. Mester
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BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE AURORA DAIRY CORPORATION
ORGANIC MILK MARKETING AND
SALES PRACTICES LITIGATION

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Status: Pending on / /

Transferee District: Judge:

Printed on 11/05/2007

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Note: Please refer to the report title page for complete report scope and key.